REMARKS

This Amendment is submitted in response to the final Office Action of September 18, 2008. Claims 1-6, 8-12, 14-19, 21-31, 33-44, 46-55, 57-65 and 67-71 are pending. Claims 1, 14, 25, 27, 37, 39, 50 and 61 are amended by this response. No new matter is submitted, and support for the above amendments can be found at least in paragraphs [0004], [0026]-[0058], [0066]-[0067], [0070]-[0071] and [0079]. A Request for Continued Examination is submitted herewith.

I Rejections Under 35 U.S.C. 101

The Office Action rejected Claims 1-6, 8-12, 14-19, 21-31, 33-34, 46-55, 57-65 and 67-71 under 35 U.S.C. 101 as being directed to non-statutory subject matter. Specifically, the Office Action states, "...the claimed invention lacks a real-world practical application." Further, the Office Action states, "Applicants are claiming a method of computing, which is merely a concept without a real world value." Applicants respectfully disagree.

In *In Re Bilski* (Fed. Cir. 2008, 07-1130 order), the Court states, "A claimed process is surely patent-eligible under §101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing." *Id* at 10. Further, the Court went on to note that though a rejected claim of *Benson* arguably operated on a machine, the claim's tie to the machine did not reduce the preemptive footprint of the claim because all uses of the algorithm were still covered by the claim. *Id* at 12-13 [discussing *Gottschalk v. Benson*, 409 U.S. 63 (1972)].

With respect to Claim 27, it is respectfully submitted that the claim is tied to a particular machine, and further, that tying the claim to this particular machine reduces the preemptive footprint of the claim because not all uses of the algorithm are covered by the claim. Specifically, Claim 27 requires not just a system, but a system having a processor, a memory, at least one microphone and an output device. Further, the

output device of the system outputs a probability density and a number of speakers from the probability density. Further still, Claim 27 requires an approximation module computing an approximation of a posterior distribution for the selected modeling parameter based on an input set of data, the input set of data having been obtained from the at least one microphone, and a current estimate of a posterior distribution of at least one unselected modeling parameter in the plurality of modeling parameters.

Thus, at least some uses of the algorithm are not within the scope of the claim. For example, a machine might not output a number of speakers. In another exemplary machine, the input set of data may not have been obtained from at least one microphone.

For at least the above reasons, it is respectfully submitted that Claim 27 and its dependent claims contain patentable subject matter, and it is respectfully requested that these rejections be withdrawn. For similar reasons, it is respectfully submitted that Claims 1, 14, 39, 50 and 61 and their respective dependent claims contain patentable subject matter, and it is respectfully requested that these rejections be withdrawn.

II Allowable Subject Matter

The Office Action notes that Claims 1-6, 8-12, 14-19, 21-31, 33-34, 46-55, 57-65 and 67-71 would be allowable if rewritten to overcome the rejections based on 35 U.S.C. §101. As discussed above, the rejections under 35 U.S.C. §101 should be withdrawn. It is therefore respectfully requested that all pending claims be allowed.

III M.P.E.P. §707.07(j)

M.P.E.P. §707.07(j) states:

> "...If the examiner is satisfied after the search has been completed that patentable subject matter has been disclosed and the record indicates that the applicant intends to claim such subject matter, the examiner may note in the Office action that certain aspects or features of the patentable invention have not

been claimed and that if properly claimed such claims may be given favorable consideration..."

Applicants respectfully request that the Examiner make Applicants aware of any subject matter disclosed by the present application which the Examiner believes is patentable. By doing so, the Examiner would help expedite prosecution by enabling Applicants to amend the present claims or draft new claims directed to such subject matter.

CONCLUSION

Accordingly, in view of the above amendment and remarks it is submitted that the claims are patentably distinct over the prior art and that all the rejections to the claims have been overcome. Reconsideration and reexamination of the above Application is requested. Based on the foregoing, Applicants respectfully requests that the pending claims be allowed, and that a timely Notice of Allowance be issued in this case. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check please charge any deficiency to Deposit Account No. 50-0463.

Respectfully submitted,

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Date: December 18, 2008

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I hereby certify that this correspondence is being electronically deposited with the USPTO via EFS-Web on the date shown below:

December 18, 2008
Date

/Noemi Tovar/
Noemi Tovar

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